Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	WC Docket No. 02-112
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175
	)	

JOINT COMMENTS OF VARTEC TELECOM, INC., EXCEL TELECOMMUNICATIONS, INC. AND EMERITUS COMMUNICATIONS, INC.

VarTec Telecom, Inc. ("VarTec"), Excel Telecommunications, Inc. ("Excel"), and eMeritus Communications, Inc. ("eMeritus"), hereinafter referred to as "the Companies," hereby submit the following joint comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned docket, concerning the appropriate classification of Bell Operating Companies' (BOCs) and incumbent independent local exchange carriers' (independent LECs) provision of in-region, interstate and international interexchange telecommunications services. The Companies appreciate the opportunity to comment and participate in this matter.

Introduction and Statement of Interest

The Companies provide local and long-distance services to residential and small and large business customers nationwide. VarTec, considered a pioneer in offering "dial-around" long distance service, actively markets its local and long-distance services to residential and small business customers through direct mail and telemarketing campaigns. Excel primarily markets its local and long-distance services to residential and small business customers through a nationwide network of independent contractors. eMeritus, on the other hand, provides customized voice, data and Internet services to commercial and wholesale customers throughout the United States.

Although the Companies use distinct sales channels to market their telecommunications services to different market segments, each relies on critical structural and accounting safeguards in the current separate affiliate protections to help prevent and detect anti-competitive behavior by the BOCs. As such, the Companies assert there is a continued need for dominant carrier regulation of the BOCs' in-region, interstate and international interexchange services after the sunset of the Section 272 structural and related requirements.

Among the issues raised in the Commission's Further Notice of Proposed Rulemaking in this docket, the Companies offer the following responses to the request for comments on the appropriate regulatory classification, the relevant service markets and related factors, and the appropriate regulatory requirements in light of current market conditions for the provision of in-region, interstate and international interexchange services by the BOCs.

Appropriate Regulatory Classification of the BOCs

The Commission seeks comment on the appropriate regulatory classification of BOCs for the provision of in-region, long-distance service after the sunset of the Section 272 requirements. The Companies note that under Section 271 of the Telecommunications Act of 1996, BOCs would be allowed to enter the in-region, long-distance market in exchange for opening up the local exchange market to competition. In the first five years following passage of the Telecom Act, only five BOC applications for Section 271 authority were approved. However, since April 2001, an additional 37 BOC applications have been approved. Unfortunately, this fast rate of Section 271 approvals has little correlation to increased competition in the local exchange market. In fact, BOCs were allowed to begin providing long-distance service in some states where market share for CLECs was below five percent. BOCs now offer in-region, long-distance service in more than 40 states where the level of competition in the local exchange market is often very low, and would likely be even lower if the analysis is limited to mass market customers (since many CLECs compete primarily for larger business customers). When combined with industry consolidation among the BOCs, these Section 271 approvals pose a critical risk–reduced regulatory oversight going forward could quickly lead to a telephony market similar to that prior to the divestiture of AT&T. The four BOCs still dominate the local exchange market and are quickly becoming leaders in the long-distance market due to their structural and cost advantages.[1]

Unless Congress decides to change the relevant statutory framework, BOC Section 271 approvals are largely irreversible. As such, the current separate affiliate requirements of Section 272 provide critical safeguards for the Commission and state regulatory authorities to detect if not prevent anti-competitive and discriminatory behavior by the BOCs. The need for dominant carrier regulation of the BOCs' in-region, long-distance services following sunset of the Section 272 requirements remains. The ability for regulators to continue monitoring behavior outweighs any additional administrative burdens placed on the BOCs.[2]

Relevant Service Markets and Related Factors

The Commission seeks comment on the identification of relevant service markets affecting the provision of in-region, long-distance services. The Companies agree with the Commission's assertion that the first step in assessing the appropriate regulatory requirements for BOC and independent LEC provision of in-region, interstate and international interexchange telecommunications services is to define and analyze the relevant markets in which these carriers provide these services. It is then critical to analyze the market power these carriers may possess in the relevant markets for these services and to fully understand existing market dynamics for these services, including significant changes in the competitive landscape. For example, there have been several milestones since the Commission adopted the *LEC Classification Order*, including BOC

[1] Reza Dibadj, Assistant Professor, University of Miami School of Business Administration, *Comment on Federal Communications Commission Long Distance Industry Regulations, Docket Nos. WC 02-112 and CC 00-175,* paras. 6-9.

[2] Dibadj, para. 10.

authority to offer in-region, interLATA telecommunications services in 41 states and the District of Columbia; an increase in bundled telecommunications service offerings; increased offerings of wide-area pricing plans by mobile telephony carriers; increasing substitution of mobile wireless service for traditional wireline service, particularly for interstate calls; and increased use of Internet-based applications.

Indeed, in a relatively brief period of time, BOCs have received authority to provide in-region, long-distance service in more than 80 percent of the nation. Such rapid entry into the in-region, long-distance market has presented a number of advantages for the BOCs. For example, BOCs have the opportunity to enter a new business where infrastructure costs are lower. In addition, BOCs now have the opportunity to bundle their telecommunications service offerings and thereby lower overhead expenses and reduce customer churn. [3] At the same time, BOCs still dominate the local exchange market. FCC data places overall CLEC penetration at roughly 13 percent of switched access lines; however, this figure is even lower (approximately 10 percent) if the analysis is limited to mass market customers. [4]

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[3] Dibadj, para. 5.

[4] Federal Communications Commission's *Local Telephone Competition: Status as of December 31, 2002,* Industry Analysis and Technology Division, Wireline Competition Bureau, June 2003, p. 1.

Despite the significant advances of mobile wireless service in the voice arena (including increased offerings of wide-area pricing plans by mobile telephony carriers), the Companies do not believe wireless lines will replace traditional wireline service in the foreseeable future due to the reliability, quality and coverage issues that the wireless industry continues to face. [5] Although Internet-based applications also continue to make inroads, the Companies believe similar challenges exist in this industry segment.

Each of these markets and the respective market factors should be weighed and considered in this proceeding. Nevertheless, the primary consideration must be the BOCs continued dominance in the local exchange marketplace and astounding growth in their in-region, long-distance markets (and inherent structural and cost advantages), which require continued dominant carrier regulation of the BOCs' in-region, interstate and international interexchange services after the sunset of the Section 272 requirements. Current protections must remain in place to help prevent and detect anti-competitive and discriminatory behavior by the BOCs.

Appropriate Regulatory Requirements Given Current Market Conditions

The Commission seeks comment on the appropriate regulatory requirements for BOCs for the provision of in-region, long-distance services in light of current market conditions. Indeed, as the BOCs have now obtained Section 271 authority in 41 states and the District of Columbia, they have become significant players in their in-region, long-distance markets. Verizon has surpassed Sprint as the nation's third largest long distance provider in terms of households [6] with 9.3% of the nation's residential market share and an astounding 28.4% of the residential long-distance market share in their "home" region, the Northeast. Likewise, SBC has captured a 23.9% residential long-

[5] Dibadj, para. 3.

[6] Press Release, *TNS Telecoms Data Ranks Verizon Third Largest Long Distance Provider in U.S., Surpassing Sprint,* Jan. 7, 2003.

distance market share in the Southwest.[7] As such, dominant carrier regulations continue to be well-suited to prevent the risks associated with the BOCs' provision of in-region, interstate and international interexchange services post Section 272 sunset.

The Commission has done an admirable job of balancing the goals of deterring BOC and independent LEC anti-competitive and discriminatory behavior and eliminating unnecessary regulation. The Companies encourage the Commission to continue enforcing necessary dominant carrier regulations in order to preserve and protect competition and the nation's consumers.

Conclusion

WHEREFORE, for the foregoing reasons, the Companies respectfully request the Commission consider these comments as these matters will significantly impact the Companies' current business operations.

Respectfully submitted,

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[7] Federal Communications Commission's *Statistics of the Long Distance Telecommunications Industry,* Industry Analysis and Technology Division, Wireline Competition Bureau, May 2003, p. 29.